

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2
3 In the Matter of the Revocation of the Collection
Agency License of:

No. 09F-BD005-BNK

4 **A & S COLLECTION ASSOCIATES, INC.**
2847 VT Rt 14
5 Williamston, Vermont 05679
6 Phoenix, AZ 85016

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

Respondent.

7
8 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
9 record in this matter, including the transcripts of the September 11, 2008 administrative hearing,
10 the Respondent's October 21, 2008 and October 27, 2008 response to the Superintendent, the
11 Department's October 27, 2008 response and the Administrative Law Judge Decision attached and
12 incorporated herein by this reference, adopts the Administrative Law Judge's Findings of Fact,
13 Conclusions of Law and Order as follows:

14 **ORDER**

15 IT IS ORDERED that Respondent's Collection Agency License Number CA0904669 is
16 revoked effective as of the date of this Order.

17 **NOTICE**

18 The parties are advised that this Order becomes effective immediately and the provisions of
19 this Order shall remain effective and enforceable except to the extent that, and until such time as,
20 any provision of this Order shall have been modified, terminated, suspended, or set aside by the
21 Superintendent or a court of competent jurisdiction.

22
23 DATED this 31st day of October, 2008.

24 
25 Felecia Rotellini
26 Superintendent of Financial Institutions
27 ...
28

1 ORIGINAL filed this 31st day of
2 OCTOBER, 2008 in the office of:

3 Felecia Rotellini
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: June Beckwith
7 2910 North 44th Street, Suite 310
8 Phoenix, Arizona 85018

9 COPY of the foregoing mailed/hand delivered
10 This same date to:

11 Lewis D. Kowal, Administrative Law Judge
12 Office of Administrative Hearings
13 1400 West Washington, Suite 101
14 Phoenix, AZ 85007

15 Erin O. Gallagher, Assistant Attorney General
16 Office of the Attorney General
17 1275 West Washington
18 Phoenix, AZ 85007

19 Robert D. Charlton, Assistant Superintendent
20 Richard Fergus, Division Manager
21 Arizona Department of Financial Institutions
22 2910 N. 44th Street, Suite 310
23 Phoenix, AZ 85018

24 A&S Collection Associates, Inc.
25 Attn: Nicole Saldi, President
26 2847 VT rt 14
27 Williamstown, VT 05679

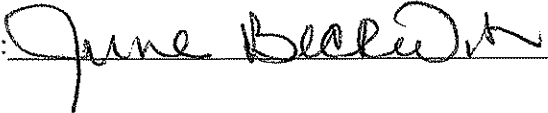
28 A & S Collection Associates, Inc.
Attn: Nicole Saldi, President
P.O. Box 395
Williamstown, VT 05679

Michael Bernstein, Statutory Agent For:
A & S Collection Associates, Inc.
2929 N. 44th Street #120
Phoenix, AZ 85018

...

1 AND COPY MAILED SAME DATE by
2 Certified Mail, Return Receipt Requested, to:

3 Robert L. Baumann
4 Baumann, Doyle, Paytas, Bernstein
5 2929 N. 44th Street, Suite 120
6 Phoenix, AZ 85018

7 BY: 
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1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In The Matter Of the Revocation of the
4 Collection Agency License of:

5 A & S Collection Associates, Inc
6 2847 VT Rt 14
7 Williamstown, Vermont 05679

8 Respondent.

No. 09F-BD005-BNK

**ADMINISTRATIVE
LAW JUDGE DECISION**

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11
12 **HEARING:** September 11, 2008

13 **APPEARANCES:** Assistant Attorney General Erin Gallagher on behalf of the
14 Arizona Department of Financial Institutions; Robert Baumann, Esq. on behalf of A & S
15 Collection Associates, Inc.

16 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

17
18 **FINDINGS OF FACT**

19 1. On April 16, 2008, Jack Watson ("Mr. Watson"), Senior Examiner with the
20 Arizona Department of Financial Institutions ("Department"), received an e-mail
21 containing information that A & S Collection Associates, Inc. ("Respondent") was
22 changing ownership from Ronald Saldi to Nicole Saldi.

23 2. Mr. Watson brought the e-mail to the attention of his supervisor, Richard Fergus
24 ("Mr. Fergus"), Division Manager of Licensing and Consumer Affairs with the
25 Department. Mr. Fergus requested that a licensing technician follow up the e-mail by
26 contacting Respondent and inquiring about a change of control of Respondent.

27 3. On April 21, 2008, the Department sent a letter to Respondent requesting
28 information regarding the alleged change of ownership of Respondent and requested
29 copies of the Transfer Agreement, Stock Transfers and Minutes that evidenced the
30 change of control.

1 4. On April 28, 2008, the Department received a response from Respondent to the
2 above-mentioned letter and received certain documents. Particularly, the Department
3 received a copy of the Special Meeting of Shareholders and Directors of Respondent
4 held on June 19, 2007.

5 5. The Minutes of the Special Meeting state that the Respondent's Board of
6 Directors consented to the transfer of shares of stock held by Ronald Saldi, Jr. to Nicole
7 Saldi. The minutes were signed by Jean Adams ("Ms. Adams") as Secretary, Ronald
8 Saldi, Jr. as Sole Shareholder and Director, and Nicole Saldi as Director. The
9 Department also received a copy of the Stock Purchase Agreement dated June 19,
10 2007 that was executed by Ronald Saldi, Jr. and Nicole Saldi.

11 6. By virtue of the Stock Agreement, Ronald Saldi, Jr. sold 100% of the issued and
12 outstanding shares of common stock of Respondent to Nicole Saldi. The Department
13 also received a copy of the stock certificate evidencing the shares of stock that had
14 been owned by Ronald Saldi, Jr. dated January 1, 2005, and a stock certificate
15 evidencing the shares of stock owned by Nicole Saldi dated June 19, 2007.

16 7. It is undisputed that Respondent did not obtain written prior approval from the
17 Superintendent of the Department ("Superintendent") for a change of control. Mr.
18 Fergus testified that the Superintendent delegated authority to grant such approval to
19 Mr. Fergus.

20 8. It is undisputed that Respondent did not notify the Department of its change of
21 officers within ten days within ten days of making that change.

22 9. On Respondent's most recent license renewal application of collection agency
23 license of Respondent ("Application") that was submitted to the Department on
24 December 18, 2007, the response to Question 4 listed the current ownership of the
25 Respondent as being Ronald Saldi, Jr. On the Application, Respondent also listed
26 Ronald Saldi, Jr. as its president and 100% owner. In response to Question 6 on the
27 Application, Respondent listed Ronald Saldi as president, and Ms. Adams as vice-
28 president. The Application was signed by Ronald Saldi, Jr. on December 10, 2007.

29 10. Ronald Saldi, Jr., in signing the Application, attested to the accuracy of the
30 information contained in the Application and that such information was truthful.

11. The Department contends that the information contained in the Application is not truthful and constitutes a material misrepresentation, and that Respondent, through Ronald Saldi, Jr. was not truthful when completing the Application.

12. In contrast, Respondent asserted that the information contained in the Application was erroneous and that Respondent made a mistake when it submitted the Application to the Department with inaccurate information. Respondent contended that it learned of the mistake regarding the Application and sought to correct it before the Department learned that there was an issue at to the change of control of Respondent.

13. The main piece of evidence that is at dispute is whether the Department received a letter authored by Ms. Adams notifying the Department of a change of control and attempting to correct the mistake that had occurred with the submission of inaccurate information in the application. See Exhibit A.

14. The Department presented evidence that it never received the letter. Respondent presented evidence that the letter was mailed. There are problems and issues regarding the positions asserted by the parties with respect to the letter. While the Department does not have any record of receipt of the letter, it acknowledged that there have been problems with its record keeping of mail in the past. Mr. Fergus implemented a daily log system for accountability and accuracy. However, such action took effect after the date when the letter was purportedly mailed.

15. Ms. Adams testified that she mailed the above-mentioned letter to the Department, which is dated March 25, 2008, about the same time that she wrote to departments in other jurisdictions regarding the change of control of Respondent. However, with the exception of the letter to the Department, the other letters contain Respondent's letterhead showing the name and address of Respondent. Further, some of the letters also contain information as to the license number of Respondent. Such information is conspicuously missing from a copy of the letter and Respondent did not provide any information to explain that situation.

16. The letter sent by the Department dated April 21, 2008, requested documentation from Respondent regarding the change of control and referenced a letter the Department received rather than an e-mail. The April 21, 2008 letter also referenced a change of ownership in Respondent's stock, which was not mentioned in

1 the e-mail received by the Department. Consequently, there is conflicting evidence
2 presented by both parties regarding whether the letter was or was not sent or received.
3 In the letter that Respondent asserted it sent to the Department, Respondent indicates
4 that it was told to fill out a new application. However, Respondent did not submit
5 another application to the Department and Ms. Adams failed to provide a plausible
6 explanation for not performing such act.

7 17. Weighing all of the evidence, even though there are issues with respect to the
8 evidence presented by both parties, the Administrative Law Judge concludes that the
9 more persuasive evidence is that Respondent did not notify the Department of the
10 situation regarding the change of control of Respondent prior to the Department's
11 receipt of the above-mentioned e-mail and the initiation of the investigation of this
12 matter.

13 18. Ms. Adams testified that she has been working for Respondent since 1993. In
14 2002, Ronald Saldi, Sr., who ran and owned Respondent, stepped down and Ronald
15 Saldi, Jr. owned and operated Respondent. She testified that Ronald Saldi, Jr. is a
16 farmer and wanted to step down from running Respondent.

17 19. Ms. Adams testified that she previously handled license applications and renewal
18 applications (licensing duties) for Respondent. However, because her husband
19 became ill, after 2004, she relied on her assistant, Misty Thurber ("Ms. Thurber"), who
20 she believed was competent to handle licensing duties. After her husband passed
21 away in 2005, Ms. Adams did not resume handling the licensing duties and Ms. Thurber
22 continued to handle them.

23 20. According to Ms. Adams, Ms. Thurber was young and inexperienced and Ms.
24 Adams made a mistake in believing that Ms. Thurber could handle the licensing duties.

25 21. Ms. Thurber is no longer employed by Respondent and Ms. Adams has resumed
26 handling the licensing duties.

27 22. On December 31, 2007, Ms. Thurber notified the Department in writing that
28 David B. Seres is Respondent's branch manager and that Jean Adams "is vice
29 president of financial and not the vice president of the company." Exhibit 2.

30 23. At hearing, Ms. Adams testified that she is the vice-president of Respondent and
secretary of the corporation.

1 24. Although Ms. Adams testified as to her belief that Ronald Saldi, Jr. just signed
2 the Application assuming it was correct, there was no corroborating evidence to support
3 that testimony.

4 25. Although Ronald Saldi, Jr. was listed as a witness for Respondent and was
5 available to testify telephonically, he did not testify at the hearing. Consequently, the
6 Administrative Law Judge did not hear from Ronald Saldi, Jr. as to the circumstances
7 surrounding his signing of the Application and why he did not notice that the Application
8 listed himself as the owner of Respondent when he had to know that he had transferred
9 the shares of stock of Respondent to his daughter, Nicole Saldi.

10 26. Mr. Fergus testified that, in the past, the Department has approved a change of
11 ownership after the fact and imposed a civil penalty upon a licensee for failing to obtain
12 prior approval of the Superintendent. In those instances, Mr. Fergus explained that the
13 change of ownership became known through a renewal application wherein the
14 licensee disclosed a change of ownership without the licensee having first obtained
15 prior approval from the Superintendent of the change of ownership.

16 27. Mr. Fergus testified that the instant situation is different in that the Application
17 contained erroneous information regarding the ownership of Respondent and, to date,
18 the Department has not received a personal history statement or fingerprint card for
19 Nicole Saldi.

20 28. The Department's letter of April 21, 2008 informed Respondent that "If there is a
21 change in the top (5) persons of the company we [the Department] will need a personal
22 history form and fingerprint card for each of them."

23 29. Ms. Adams testified that she focused on the itemized section of the
24 Department's April 21, 2008 letter specifying the transaction documents that the
25 Department required and that she sent those to the Department. However,
26 Respondent failed to present credible reason why it did not provide the Department with
27 a personal history form and fingerprint card for Nicole Saldi.

CONCLUSIONS OF LAW

28 1. This hearing is a disciplinary proceeding and the burden of proof is on the
29 Department to establish by a preponderance of the evidence violations of the State's laws
30 regulating collection agencies. See A.R.S. § 41-1092.07(G)(2) and A.A.C. R2-19-119.

1 2. A preponderance of the evidence is "evidence of greater weight or more
2 convincing than the evidence which is offered in opposition to it; that is, evidence which
3 as a whole shows that the fact sought to be proved is more probable than not." Black's
4 Law Dictionary, 1182 (6th ed. 1990).

5 3. The weight of the evidence of record established that Respondent violated
6 A.R.S. § 32-1026(B) by conducting a change of control without receiving prior approval
7 by the Superintendent of the Department.

8 4. The weight of the evidence of record established that Respondent violated
9 A.A.C. R20-4-1502(A) by conducting a change of control in its officers and directors
10 and failing to notify the Department within ten days of such change.

11 5. Respondent made a material misstatement on the renewal application by
12 incorrectly stating its ownership, in violation of A.R.S. § 32-1025(A). By knowingly
13 completing and submitting to the Department a renewal application that incorrectly
14 stated the ownership of the company establishes that Ronald Saldi, Jr. is not a person
15 of honesty, truthfulness or good character within the meaning of A.R.S. § 32-
16 1053(A)(2).

17 6. While the weight of the evidence does not support a finding that Nicole Saldi is a
18 person who is not honest, truthful or of good character, it raises a potential question as
19 to her honesty, truthfulness and good character because she was the owner of
20 Respondent at the time when the Application was submitted to the Department. Nicole
21 Saldi did not testify at the hearing regarding the circumstances surrounding the
22 execution and filing of the Application.

23 7. Based upon the above found violations, grounds exist to suspend or revoke
24 Respondent's collection agency license pursuant to A.R.S. § 32-1053(A)(2),(3), and (6).

25 8. The Superintendent has the authority to impose a civil penalty not to exceed
26 \$5,000.00 for each violation pursuant to A.R.S. § 6-132.

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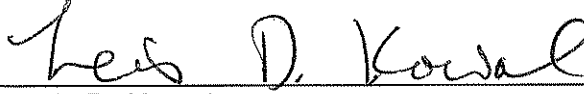
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29 ...

ORDER

IT IS ORDERED that on the effective date of the Order entered in this matter Respondent's license shall be revoked.

Done this day, September 29, 2008.



Lewis D. Kowal
Administrative Law Judge

Original transmitted by mail this
30 day of September 2008, to:

Arizona Department of Financial Institutions
Felecia Rotellini, Superintendent
ATTN: Susan L. Ross
2910 North 44th Street, Suite 310
Phoenix, AZ 85018

By 